

EXHIBIT A

Movius, David

From: Movius, David
Sent: Monday, September 29, 2014 3:45 PM
To: 'Yanchar, Georgia'
Cc: McMullen, Dan; McLandrich, John
Subject: MRI v. Lynx - Source Code Protective Order
Attachments: 5146035.docx

Georgia –

Lynx's revisions to MRI's proposed Source Code Addendum in view of Judge Boyko's September 18 Order are attached.

Regards,

Dave

David T. Movius
Member

McDonald Hopkins
A business advisory and advocacy law firm®



T: 216.430.2029
F: 216.348.5474
dmovius@mcdonaldhopkins.com
www.mcdonaldhopkins.com

600 Superior Avenue East
Suite 2100
Cleveland, OH 44114

Chicago • Cleveland • Columbus • Detroit • Miami • West Palm Beach

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

MRI SOFTWARE, LLC,)	CASE NO. 1:12-cv-01082-CAB
)	
Plaintiff,)	JUDGE Christopher A. Boyko
)	
v.)	
)	ADDENDUM TO STIPULATED
LYNX SYSTEMS, INC.,)	PROTECTIVE ORDER REGARDING
)	SOURCE CODE
Defendant.)	
)	

This Addendum to the Stipulated Protective Order entered by the Court in this action on July 12, 2012 incorporates therein the following provision regarding the production of “Source Code” (as defined below).

20. Source Code. To the extent that production of confidential, proprietary or trade secret information that comprises computer source code and/or live data (that is, data as it exists in a database) (“Source Code”) becomes necessary in this case, a producing party may, at its sole discretion, produce same pursuant to the following “**Source Code Procedure.**”

- (a) **Scope.** “Source Code” may include all forms of digital computer instructions (in human readable form or otherwise) and information and materials embodying same, including but not limited to embedded applications implemented as firmware, software, hardware, or any combination thereof, software, programs, drivers, application program interfaces (APIs), source code, object code, compiled code, byte code, interpreted code, any form of code stored in any digital storage medium, and any form of programmable logic code, source code for logic compilers, and/or hardware description languages for programming a configurable digital circuit such as a programmable logic controller or device (PLC or PLD). “Source Code” may also include code written in any and all programming languages, command languages and shell languages and all “header files,” “make” files, project files, link files, scripts, live data (that is, data as it exists residing in a database or databases) and all embedded programmer notes and comments.
- (b) **Designation.** A producing party may designate Source Code as “ATTORNEYS’ EYES ONLY – SOURCE CODE.” In addition to the protections applicable to “ATTORNEYS’ EYES ONLY” information, the following additional protections will apply to information designated “ATTORNEYS’ EYES ONLY – SOURCE CODE,” unless the producing party and receiving party agree otherwise, in writing.

(c) **General Protections.** Information designated ATTORNEYS' EYES ONLY – SOURCE CODE under this Order shall not be used or disclosed by outside counsel for the parties or any other persons identified below except as strictly provided in this Source Code Procedure or for any purpose whatsoever other than to prepare for and to conduct discovery and trial in this action, including any appeal thereof. Subject to these requirements, the following categories of persons may be allowed to review documents and information that have been designated ATTORNEYS' EYES ONLY – SOURCE CODE:

- (1) **Outside Counsel.** Outside counsel of record for the receiving parties and employees and agents of such counsel who have responsibility for the preparation and trial of the action;
- (2) **Court Reporters and Recorders.** Court reporters and recorders engaged for depositions;
- (3) **Independent Consultants, Investigators, and Experts.** Independent consultants, investigators, or experts specially retained by the receiving parties or counsel for the receiving parties to assist in the preparation and trial of this action. The right of a person to receive any ATTORNEYS' EYES ONLY – SOURCE CODE documents or information under this subparagraph will be subject to the advance approval of disclosure to such person by the producing party or by permission of the Court. The party seeking approval of disclosure to an independent consultant, investigator, or expert must provide the producing party with the name and curriculum vitae of the proposed individual and an executed copy of the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound, in advance of providing any ATTORNEYS' EYES ONLY – SOURCE CODE documents or information of the producing party to that person. Any objection by the producing party to disclosure to an independent consultant, investigator, or expert receiving ATTORNEYS' EYES ONLY – SOURCE CODE documents or information must be made in writing within 5 business days following receipt of the identification of the proposed person, must be made upon counsel's good faith belief that disclosure to such person would threaten the producing party's business, and must set forth how disclosure to the proposed recipient would threaten the producing party's business. Within 3 business days after the receipt of such writing, the party seeking approval of disclosure to the independent person shall inform the producing party whether it intends to proceed with the disclosure to the independent person or withdraw its request for approval. If the party seeking approval does not withdraw its request for approval, the producing party may file a motion for protective order with the Court. ATTORNEYS' EYES ONLY – SOURCE CODE documents or information may be disclosed to an independent consultant, investigator, or expert if no motion for protective order has been filed by the producing party within 10 business days following receipt of the identification of the proposed person. Approval of independent consultants, investigators, or experts must not be unreasonably withheld; and

(4) **Others by Consent.** Other persons only by written consent of the producing party or upon order of the Court, subject to the further conditions of this Source Code Procedure. All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

(e) **Source Code Inspection.** In response to a proper ~~and undisputed~~ request, Source Code, in its native format, may be made available for inspection as provided below, during normal business hours, at a facility reasonably designated by the producing party and in an environment in which the confidentiality and security of the Source Code can be properly protected (including, at the producing party's option, on a "stand-alone" computer that is not linked to any network, intranet or the Internet).

(1) The receiving party shall provide a list of persons who intend to inspect the Source Code to the producing party at least five (5) business days in advance of any scheduled inspection.

(2) No copies of any portion of Source Code may leave the room in which the Source Code is made available for inspection except as otherwise provided herein. The receiving party's outside counsel and/or experts may take handwritten notes relating to the Source Code, but may not copy the source code into the notes in such a manner as to circumvent the protections herein.

(3) Nothing herein shall require the producing party to provide executable code, and ~~no electronic copies of Source Code may be made.~~ Under no circumstances may the Source Code be compiled into executable code by the receiving party.

(4) The receiving party may not copy, remove, or otherwise transfer any portion of the Source Code onto any recordable media or recordable device, and may not take any form of recordable media or recordable device, including without limitation, any sound recorder, ~~cellular telephone~~, peripheral equipment, CD, DVD, camera, computer, or computer storage device, or smart phone (but not including a cellular telephone for use as such) into the room in which the Source Code is available for inspection.

(f) ~~**Printouts or Photocopies of Excerpts.**~~ **The Production of Source Code.** Following inspection, the receiving party shall be permitted to request ~~printouts or photocopies of a reasonable number of Source Code excerpts, all of which~~ native copies of Source Code to the extent reasonably necessary for its prosecution and defense of this litigation. Any Source Code produced under this Section shall be designated and clearly labeled "ATTORNEYS' EYES ONLY – SOURCE CODE," ~~provided that the.~~

(1) ~~The producing party agrees that the excerpt shall deliver the requested source code by copying it to the encrypted hard drive of a "stand-alone" computer that is not unreasonably voluminous, linked to any network, intranet or the Internet located at the offices of the requesting party's counsel of record for this case, where it shall remain for the duration of this case. A printer may be connected to the stand-alone computer solely for making printouts in accordance herewith.~~

and any printouts shall be clearly labeled "ATTORNEYS' EYES ONLY – SOURCE CODE."

- ~~(1)(2) The Source Code-receiving party may not be copy, remove, or otherwise transfer any portion of the Source Code from the stand-alone computer onto which it was copied in its entirety, by the producing party onto any recordable media or recordable device, and under no circumstances may Source Code be compiled into executable code by the receiving party.~~
- ~~(2) At the sole discretion of the producing party, the producing party may provide a printer attached to the computer; alternatively, a stand-alone computer containing the Source Code to only those persons permitted to have access to the Source Code under this Order, and access to and use of such computer may further be equipped to store print requests in a print folder.~~
- ~~(3) During the inspection process, and at restricted through the sole discretion use of unique usernames and passwords. The receiving party shall maintain a log containing the following information: (i) the identity and title of each person granted access to the Source Code, and (ii) for each person granted access, the dates when such access was granted. The producing party, the receiving party shall be permitted either to: (i) make one (1) entitled to a copy only of any Source Code excerpt (with necessary additional copies provided for below at (3)); or (ii) request that the party providing the inspection provide paper copies of any Source Code excerpt to the receiving party within the log upon five (5) business calendar days of its request, unless otherwise agreed. In either case, the party providing the inspection shall, before the printouts or copies are produced advance written notice to the receiving party, provide for marking such copies clearly and prominently as "ATTORNEYS' EYES ONLY – SOURCE CODE" and affixing individually identifying production numbers.~~
- ~~(4) If the receiving party's outside counsel, consultant(s) or expert(s) obtain printouts or photocopies of Source Code excerpts, Outside counsel for the receiving party shall ensure that such outside counsel, consultant(s) or expert(s) keep the, when not in actual use, any printouts or photocopies of Source Code are maintained in a locked cabinet or repository in a secured area in the offices of such outside counsel, consultant(s) or expert(s). The Authorized representatives of the receiving party may also temporarily have the printouts or photocopies of excerpts of Source Code, but only to the extent reasonably necessary to prosecute or defend this case, at: (i) the Court for any proceedings(s) relating to the Source Code, for the dates associated with the proceeding(s); (ii) the sites where any deposition(s) relating to the Source Code are taken, for the dates associated with the deposition(s); and (iii) any intermediate location reasonably necessary to transport the printouts or photocopies (e.g., a hotel prior to a Court proceeding or deposition). Any such paper copies shall be designated and clearly labeled "ATTORNEYS' EYES ONLY – SOURCE CODE and maintained at all times in a secured location. The receiving party may not create any electronic or other images of the printouts or paper copies and may not convert any of the~~

~~information contained in the printouts or copies into any electronic format.~~ The receiving party may only make additional paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including, e.g., a testifying expert's expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. ~~In no event may the number of such additional copies exceed two (2) without express written approval from the producing party. The receiving party shall notify the producing party when any additional copy is made and shall mark each page of any additional copy with the annotation: "Copy ___ of ___ Copies."~~ Any paper copies used during a deposition must not be shown to any person not entitled to view Source Code under this Order or otherwise given to or left with a court reporter or any other individual in attendance.

~~(f)(g)~~ **Use of Excerpts.** A receiving party may include excerpts of Source Code that relate to the technical features that are at issue in the case in a pleading, exhibit, expert report, discovery document, deposition transcript, or other Court document, but only to the extent reasonably necessary to prosecute or defend this case, and provided that such documents are appropriately designated under this Stipulated Protective Order, restricted to those who are entitled to have access to them as specified herein, and, if filed with the Court, filed under seal in accordance with N.D. Ohio Local Rule 5.2. ~~No copy of Source Code in its entirety may be used at a deposition or in or attached to any pleading, exhibit, expert report, discovery documents, deposition transcript, or other Court document.~~

- (1) Any Source Code excerpt used as a deposition exhibit shall not be appended to the transcript. Instead, for any Source Code excerpt used as a deposition exhibit, the receiving party shall have the deponent, on the record, sign his or her name to each page of the original exhibit. The receiving party shall retain the original of any such exhibit and shall provide a copy of the signed original exhibit to the producing party.
- (2) To the extent any portion of Source Code is quoted in another document, the party making the quotation must clearly designate the quoting document as containing Source Code and appropriately restrict access to such document.

(h) Destruction of Copies. The receiving party shall destroy any electronic copy of Source Code produced to it during the course of this litigation. The producing party shall be entitled to be present during the destruction of the electronic copies, and shall be entitled to inspect the stand-alone computer on which it was stored at the offices of the receiving party's counsel of record to ensure its complete destruction.

So Ordered.

Dated: _____

U.S. District Judge
U.S. Christopher A.

B
o
y
k
o

**WE SO MOVE/STIPULATE
and agree to abide by the
terms of this Order**

**WE SO MOVE/STIPULATE
and agree to abide by the
terms of this Order**

Daniel McMullen (0034380)
Georgia Yanchar (0071458)
CALFEE, HALTER & GRISWOLD, LLP
The Calfee Building
1405 East Sixth Street
Cleveland, OH 44114-1607
Telephone: (216) 622-8200
Facsimile: (216) 241-0816
dmcmullen@calfee.com
gyanchar@calfee.com

David T. Movius (0070132)
Matthew J. Cavanagh (0079522)
MCDONALD HOPKINS LLC
600 Superior Ave., East, Suite 2100
Cleveland, OH 44114
Telephone: (216) 348-5400
Facsimile: (216) 348-5474
dmovius@mcdonaldhopkins.com
mcavanagh@mcdonaldhopkins.com

John T. McLandrich (0021494)
MAZANEC, RASKIN & RYDER CO., LPA
100 Franklin's Row
34305 Solon Road
Cleveland, OH 44139
Telephone: (440) 248-7906
Facsimile: (440) 248-8861
jmclandrich@mrrlaw.com

Counsel for MRI Software, LLC

Counsel for Lynx Systems, Inc.

Dated: _____

Dated: _____